

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4651 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMANBHAI SHIVABHAI PRAJAPATI

Versus

DISTRICT MAGISTRATE KHEDA

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Appearance:

MR YS LAKHANI for Petitioner  
Mr H L Jani, APP for the State  
Mr B T Rao for Respondent No. 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 24/09/98

ORAL JUDGEMENT

Heard the learned Advocate for the parties.

The petitioner has been detained for the alleged breach of provisions of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980. The petitioner has been kept in Junagadh Central Jail. The petitioner has challenged the order of

detention dated 11.5.1998 passed by the respondent No.1-District Magistrate, Kheda on various grounds. However, this Special Civil Application deserves to be allowed on the short ground that the Central Government had not decided the representation dated 4.7.1998 submitted by the wife of the detenu. It is stated that the wife of the detenu submitted representation dated 4.7.1998 to the Secretary, Food & Civil Supplies Department, Gandhinagar.

2. Mr P D Shah, Under Secretary, Food, Civil Supplies and Consumer Affairs department, Gandhinagar, has stated in his affidavit that the parawise remarks were forwarded by the Central Government by FAX on 14.7.1998 in reply to the telegram of the Central Government dated 9.7.1998. In the counter-affidavit, Mr K V S Rao, Under Secretary in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi has stated that after considering the contents of the representation dated 6.7.1998, the parawise comments were called for from the State Government. It is further stated that parawise comments of the said representation from the State Government is still awaited. It is to be noticed that Mr P D Shah, Under Secretary has stated that the parawise comments have been sent on 14.7.1998 by FAX. Thus, the representation of the petitioner has yet not been decided inspite of the fact that the parawise comments have been sent by the State Government as back as on 14.7.1998. There is no reason to disbelieve that the parawise reply sent by FAX has not been received by the Central Government. Even if it is assumed for a moment that the same has not been received, the Central Government cannot sit and await for the comments for an indefinite period. There is nothing to show that after 9.7.1998 any reminder was issued by the central Government to the State Government. Thus, I have no hesitation in holding that the fundamental right of the petitioner guaranteed under Article 22 (5) of the Constitution of India is infringed, which makes the continued detention of the petitioner illegal.

2. In view of the aforesaid, this Special Civil Application is allowed. The order of detention dated 11.5.1998 passed by the District Magistrate, Kheda at Nadiad is quashed and set aside. The petitioner shall be set at liberty forthwith, if he is not required in any other case. Rule made absolute accordingly.

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msp.